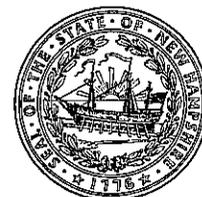




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

March 12, 2009

The Honorable Susan W. Almy, Chairman  
House Ways and Means Committee  
Rooms 202, Legislative Office Building  
Concord, NH 03301

**Subject:** HB 2, Sections 69-70 (Amendment Number 0562h) relative to subdivision fees and environmental services' subsurface systems program.

Dear Chairman Almy:

Thank you for the opportunity to comment on HB 2, Sections 69-70 (Amendment 0562h), which increases subsurface system design review and subdivision fees, and creates a dedicated Subsurface Systems Fund. The Department of Environmental Services (DES) strongly supports Amendment 0562h with an amendment (copy attached) which broadens the fees that support the proposed Subsurface Systems Fund to be consistent with how the program is currently funded. With the proposed DES amendment, the Amendment will meet the primary objectives of ensuring that this program will not operate at a loss to the general fund during the next biennium and will be managed as a dedicated fee account independent of the general fund in the future.

The original language of Amendment 0562h inadvertently did not include all the fees that currently support the program and which would be appropriate for inclusion to meet the Amendment's objectives. In addition to the subdivision application fees included in the original language, other application fees in the existing statute that should be included are for septic systems, as well as permits for designers and installers. The proposed amendment also includes a proposed fee increase for septic systems applications consistent with the subdivision applications fees that are set by regulations. With the recommended amendment, Amendment 0562h will eliminate the costs to the general fund of the Subsurface Systems Program.

The Subsurface System Program provides capacity for DES to implement New Hampshire's septic system program as required by RSA 485-A. Program activities include septic system and subdivision plan reviews, new system inspections, designer and installer permitting, and compliance activities to ensure that systems are installed properly and that failed systems that create public health and environmental problems are replaced. The attached chart provides an 18-year history of subdivision and septic system applications for the period from State FY 1992 through FY 2009 (projected). This chart shows the cyclical nature of program activity, hence program revenues, with the economy. Over this 18-year period, applications for subsurface systems and subdivision units ranged from a high of 15,233 in 2005 to a projected low of 5,559 in 2009. During peak economic periods when development is booming, revenues exceed expenses and the subsurface systems program has provided positive cash flow to the state general fund, whereas, during recessions, such as we are currently experiencing, the program loses money. Amendment Number 0562h serves to ensure that the program will have a positive cash flow in FY 2010-2011 and will not be a burden to the general fund in the future.

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

**P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095**

Telephone: (603) 271-3503 • Fax: (603) 271-2982 • TDD Access: Relay NH 1-800-735-2964

A comparison of the revenues, expenses and budgets for FY 2009 and 2010 is provided in the table below.

	Number of Units	FY 2009		FY 2010	
		Unit Fee	Total	Proposed Unit Fee	Total
Estimated Revenues:					
Subsurface Systems	3963	\$150	\$594,450	\$300	\$1,188,900
Subdivisions	1596	\$150	\$239,400	\$300	\$ 478,800
Designer and Installers	3800	\$40	\$152,000	\$40	\$ 152,000
Total			\$985,850		\$1,819,700
Total Estimated Expenses			\$1,636,720		\$1,815,000
Net(Revenues-Expenses)			(\$ 650,870)		\$4,700
Annual Budget			\$2,027,699		\$2,134,718

For both FY 2009 and FY 2010, the annual budget as presented in the table is greater than the estimated total annual expenses because, for both years, actual program staffing will be lower than full program staffing. In fact, at this time, the Subsurface System Bureau has 5 vacant positions out of 24 total positions because we have reduced staff by attrition over the course of FY 2009 by leaving permitting-related positions unfilled in recognition of the slow economy. Even with these vacancies, in FY 2009, we project an operating loss to the general fund of just over \$650,000. With the fee increase, at the existing staffing level including increased staff costs attributable largely to statutory increases in salaries and benefits, the Subsurface Systems Bureau would be expected to effectively "break even" during FY 2010. Please note that this assumes that the very low activity levels of FY 2009 for new systems will continue through FY 2010. It also assumes no fee revenues from replacements systems, which we intend to require by rule clarification in FY 2010, and could raise in the order of \$300,000 (at assumed activity level of 1,000 systems/year). Therefore, these revenue projections are probably conservative. Also, as the economy heats up, revenues will increase first and then ultimately we will need to systematically refill vacant Subsurface Bureau positions to perform necessary application processing, plan reviews, permitting and site inspections.

In conclusion, the creation of a dedicated Subsurface Systems Fund with the proposed fee increases will permanently eliminate the cost burden of this program on the state general fund. Also, changing this program from a general fund program to a fee-funded program would make the program's funding structure more consistent with other development permitting programs at DES including the Terrain Alteration Program, the Shoreland Program, and portions of the Wetlands Program. This consistency will be very beneficial as DES moves toward unified, more streamlined permitting processes in the future.

Thank you again for this opportunity to comment on Amendment 0562h. Please do not hesitate to call either me at 271-2958, or Rene Pelletier at 271-2951, if you have any questions or need additional information.

Very truly yours,



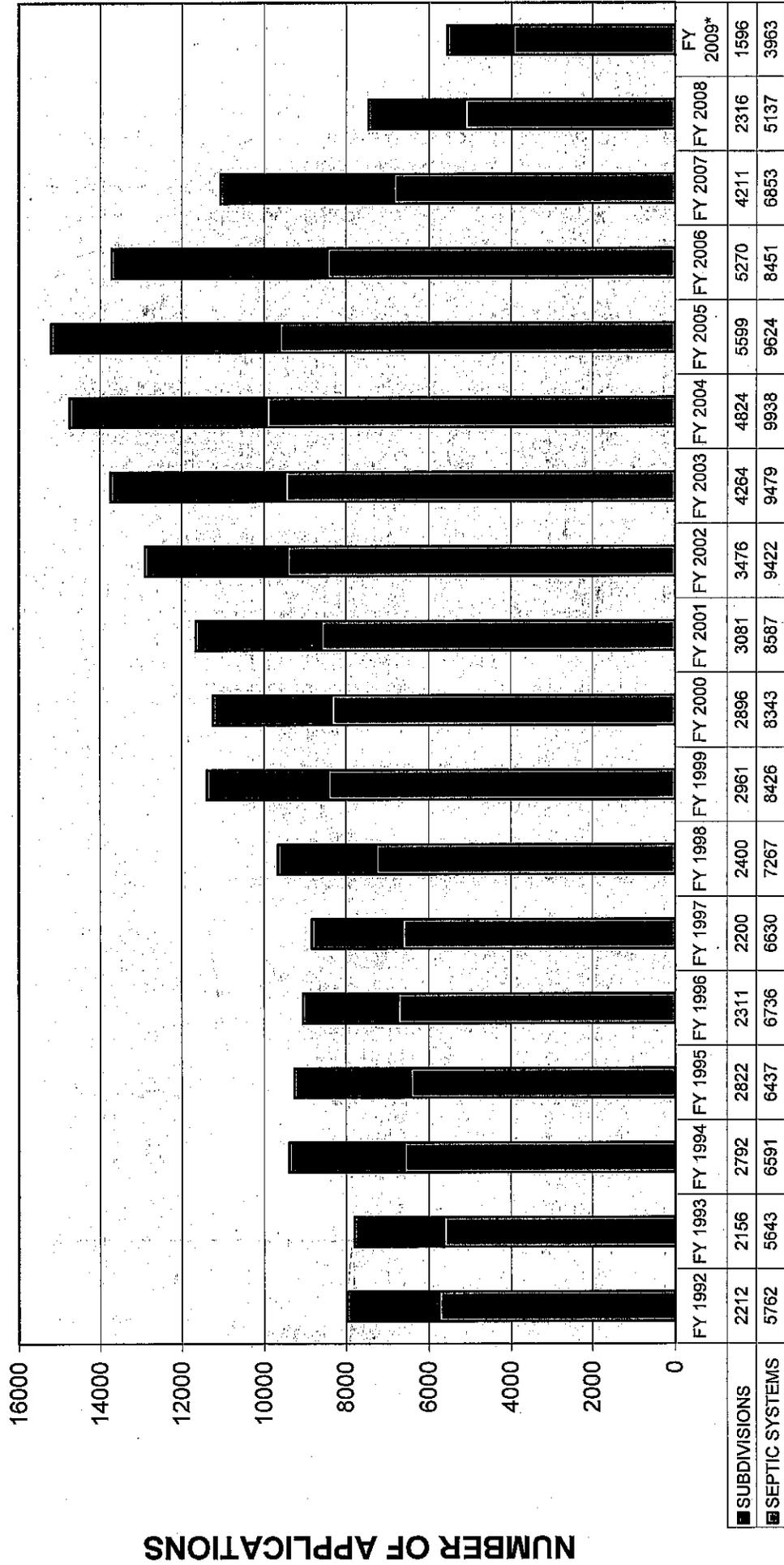
Thomas S. Burack, Commissioner

Attachments

Cc: Katherine Peters, Office of Governor Lynch

**NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES  
SUBSURFACE SYSTEMS BUREAU**

**NUMBER OF SEPTIC SYSTEMS AND SUBDIVISIONS APPLICATIONS RECEIVED  
BY FISCAL YEAR**



**FISCAL YEAR**

\* NOTE: THE NUMBERS FOR FY 2009 3RD AND 4TH QUARTERS ARE ESTIMATED

**PROPOSED AMENDMENT TO AMENDMENT 0562h FOR THE ESTABLISHMENT OF SUBSURFACE SYSTEMS FUND AND RELATED FEE INCREASE**

**1. Amend RSA 485-A: 30 to read as follows:**

**485-A:30 Fees. –**

I. Any person submitting plans and specifications for a subdivision of land shall pay to the department a fee of ~~\$150~~ **\$300** per lot. Said fee shall be for reviewing such plans and specifications and making site inspections. Any person submitting plans and specifications for sewage or waste disposal systems shall pay to the department a fee of ~~\$140~~ **\$300** for each system. Said fee shall be for reviewing such plans and specifications, making site inspections, the administration of sludge and septage management programs, and for establishing a system for electronic permitting for waste disposal systems, subdivision plans, and for permits and approvals under the department's land regulation authority. The fees required by this paragraph shall be paid at the time said plans and specifications are submitted and shall be deposited ~~with the treasurer as unrestricted revenue.~~ **in the subsurface systems fund established in paragraph I-b.** For the purposes of this paragraph, the term "lot" shall not include tent sites or travel trailer sites in recreational parks which are operated on a seasonal basis for not more than 9 months per year.

~~I-a. In addition to fees required under paragraph I, any person submitting plans and specifications for sewage or waste disposal systems shall pay to the department a fee of \$10 for each system. Said fee shall be for supporting a general-funded position at the department to advocate for and implement long-term septage disposal solutions in partnership with New Hampshire municipalities. In the event and to the extent the department is able to use funds from sources other than the general fund to support the position, it shall receive from the general fund an amount equivalent to the fees collected under this paragraph, in addition to any other appropriations, for use in the septage handling and treatment facilities grant program to municipalities under RSA 486:3, III. The fees required by this paragraph shall be paid at the time said plans and specifications are submitted and shall be deposited with the state treasurer as unrestricted revenue.~~

***I-a. There is hereby established the subsurface systems fund into which the fees collected under paragraph I shall be deposited. The fund shall be a separate, nonlapsing fund, continually appropriated to the department for the purpose of paying all costs and salaries associated with the subsurface systems program.***

***I-b. Beginning October 1, 2009 and each fiscal quarter thereafter, the department shall submit a quarterly report to the house and senate finance committees, the house resources, recreation, and economic development committee, and the senate energy, environment, and economic development committee relative to administration of the subsurface systems program.***

*New Subparagraph; Dedicated Fund; Subsurface Systems Fund Added. Amend RSA 6:12, I(b) by inserting after subparagraph (276) the following new subparagraph:*

*(277) Moneys deposited in the subsurface systems fund, under RSA 485-A:30, I-b.*

2. Amend RSA 485-A: 30, I (a) to read as follows:

**485-A:36 System Installer Permit. –**

I. (a) No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of \$80 and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. ~~All fees shall be deposited with the state treasurer as unrestricted revenue.~~ *in the subsurface systems fund established in RSA 485-A:30, I-b*

3. Amend RSA 485-A: 35, II to read as follows:

I. (a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of \$80 and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, payment

*New Subparagraph; Dedicated Fund; Subsurface Systems Fund Added. Amend RSA 6:12, I(b) by inserting after subparagraph (276) the following new subparagraph:*

*(277) Moneys deposited in the subsurface systems fund, under RSA 485-A:30, I-b.*

**2. Amend RSA 485-A: 30, I (a) to read as follows:**

**485-A:36 System Installer Permit. –**

I. (a) No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of \$80 and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. ~~All fees shall be deposited with the state treasurer as unrestricted revenue.~~ *in the subsurface systems fund established in RSA 485-A:30, I-b*

**3. Amend RSA 485-A: 35, II to read as follows:**

I. (a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of \$80 and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, payment

of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b). A permit issued to any person may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541. *All fees shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b*

II. Any person who desires to submit plans and specifications for a sewage or waste disposal system for the person's own domicile shall not be required to obtain a permit under this paragraph provided that the person attests to eligibility for this exemption in the application for construction approval. The commissioner shall adopt rules, prepared under the supervision of a professional engineer licensed to practice engineering in the state of New Hampshire, pursuant to RSA 541-A, relative to requiring a permit holder to be a licensed professional engineer with a civil or sanitary designation in order to submit applications for construction approval in certain complex situations. *All fees collected pursuant to this paragraph shall be deposited with the state treasurer as unrestricted revenue in the subsurface systems fund established in RSA 485-A:30, I-b*